

Planning Department

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CITY OF ALBUQUERQUE BOARD OF APPEALS NOTIFICATION OF DECISION

Martina Mesmer appeals the Zoning Hearing Examiner's Approval of a special exception, with conditions, to Zoning Code Section §14-16-2-6(B)(10): a Conditional Use to allow a community center in an R-1 zone for Tract A, Singing Arrow Park located within Canada Village Second Unit, zoned R-1, located at 13001 Singing Arrow Ave. SE (L-22).

Appeal No:..... 17BOA-20001
Special Exception No: 16ZHE-80328
Project No:..... 1011083
Hearing Date:..... 4/25/2017

In the matter of **17BOA-20001**, the Zoning Board of Appeals (BOA) voted to **REMAND** the Appeal, to the Zoning Hearing Examiner (ZHE) based on the following findings:

FINDINGS:

1. This is an Appeal of the Zoning Hearing Examiner's (ZHE's) APPROVAL of a Special Exception, with conditions, pursuant to Zoning Code §14-16-2-6 (B)(10): a Conditional Use to allow a community center in an R-1 Residential zone (the "subject request").
2. The subject site, described as Tract A, Singing Arrow Park located within Canada Village Second Unit, contains approximately 16 acres and is located at 13001 Singing Arrow Ave. SE.
3. The subject site is zoned R-1 Residential zone, which is §14-16-2-6 of the Zoning Code. A "recreational facility (non-profit), such as a community center, swimming pool, tennis club" is a conditional use in the R-1 Residential zone pursuant to Zoning Code §14-16-2-6 (B)(10).
4. The conditional use is required to allow the proposed Singing Arrow Community Center, to construct up to a 15,000 sf building to be located within the approximately 16 acre park site, owned by the City of Albuquerque. The existing community center building (approximately 6,000 sf), near the western end of the park site, would remain.
5. The subject site is within the boundaries of the East Gateway Sector Development Plan (EGSDP), though it was not rezoned with the adoption of the EGSDP in 2010. The EGSDP's adoption included a repeal of the Singing Arrow Neighborhood Plan (1983).
6. Chapter 7 of the EGSDP addresses parks and open space. Under 7.3- Recommendations, one recommendation is to "Expand park uses as Singing Arrow Park: Protect, but develop the archaeological site with natural vegetation, carefully placed trails, interpretive signage, and outdoor furnishings." This recommendation is also found in Chapter 10- Implementation.

7. The Albuquerque/Bernalillo County Comprehensive Plan, the EGSDP, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
8. Zoning Code §14-16-4-4(B)(4) states that an appellant to a special exception action shall clearly articulate the reasons for the appeal by specifically citing and explaining one or more alleged errors of the ZHE in rendering his decision:
 - (a) in applying adopted city plans, policies and ordinances in arriving at his decision;
 - (b) in the appealed action or decision, including its stated facts; and
 - (c) in acting arbitrarily or capriciously or manifestly abusive of discretion.

The appellant did not specifically cite one or more of the alleged errors pursuant to Zoning Code §14-16-4-4(B)(4). Rather, the appellant articulated the reasons for the appeal in a letter (Record, p. 3) and a supplemental letter (Record, p. 4-8). The appellant believes that the ZHE decision was based on information that is no longer valid and that the building's purpose and detail have changed. Specifically, the appellant states that the ZHE decision fails to consider the unique layout of the park, that critical details beyond the scope of design need to be addressed, and that the question of injurious cannot be answered without proper attention to building location; she strongly opposes the location of the proposed building. The appellant believes that misinformation, incorrect facts, and decisions made without public input (ex. building location) should not be the basis of the ZHE decision and that the case should be heard again when all the facts are available (Record, p. 3).

9. Zoning Code §14-16-4-2(C)(1), Special Exceptions, states that a conditional use shall be approved, if and only if, in the circumstances of the particular case and under conditions imposed, the proposed use:
 - (a) Will not be injurious to the adjacent property, the neighborhood or the community;
 - (b) Will not be significantly damaged by surrounding structures or activities.
10. The ZHE found that several concerned neighbors and recreational users of the area raised valid concerns about the project, including security, impact of use by homeless people, visual intrusiveness, and parking in the adjacent residential area (Record, p. 9, Finding 6). Additional concerns mentioned in testimony at the January 17, 2017 hearing are the location of the future building on the park site, the size of the future building, access to community center facilities, loitering, increased traffic and more potential for auto accidents on the curve between Rachel and Eugene Roads in the adjacent subdivision.
11. The ZHE also found that each of these concerns has the potential to be injurious to the neighborhood but, with proper attention paid to the concerns expressed by neighbors, the project can be of significant benefit to the community and neighborhood and may serve to address some of the current, detrimental conditions in the neighborhood (Findings 8 and 9, Record, p. 9).
12. The ZHE also found that the proposed use will not be significantly damaged by surrounding structures or activities as required by Zoning Code §14-16-4-2-(C)(1)(b) (Finding 11, Record, p. 10).

13. The ZHE found that a community center already exists on the subject site, so the request is not for a change of use for the general vicinity, but rather is for an expansion of community amenities (Finding 9).
14. The applicant provided an illustrative exhibit (labeled “site plan”) that shows the location of the proposed community center. It does not show ingress and egress or circulation. Two areas, indicated by tan shading and grey shading, are not included on the legend. There are no explanatory notes. The applicant later supplemented the illustrative exhibit with a topographic and utility survey and separate parking calculations.
15. The amount of parking required for the proposed use is unknown at this time. Parking should have been calculated by using (A)(22) of Zoning Code §14-16-3-1, Off Street Parking Regulations- one space for every four seats (not one space for every four occupants). An exhibit indicating the number of seats would be needed, rather than a breakdown of square footages internal to the building. Staff has verified this with Code Enforcement Staff.
16. Though not required with a conditional use request, in this case a preliminary site development plan may have been helpful because it would contain a main sheet, a landscaping plan, and building elevations. Information regarding ingress and egress, parking amounts and location, and pedestrian circulation, included on a main sheet, could be considered in evaluating whether or not the proposed use would be injurious to adjacent property, the neighborhood, or the community.
17. The ZHE approved the conditional use based on the following, two conditions:
Condition 1: Applicant shall involve interested parties, including neighbors and the neighborhood association, in the design phase. This involvement shall include adequate notice, an opportunity for meaningful input, and, if necessary, facilitated dispute resolution.
Condition 2: The design phase shall specifically include means to address impacts from traffic and parking associated with the center, and impacts from users of the center.
18. The BOA finds that the ZHE failed to adequately support the conclusions reached in the ZHE report. The report wholly lacked findings of facts that support the legal conclusions reached by the ZHE.
19. Based on these findings, the Zoning Board of Appeals hereby REMANDS this matter to the ZHE for a rehearing of the issue. The BOA specifically requests that the ZHE report on the rehearing include findings of facts to support conclusions of law reached by the ZHE.

If you wish to appeal this decision, you must do so by **May 10, 2017**, in the manner described below. A non-refundable filing fee will be calculated at the Planning Department’s Land Development Coordination counter and is required at the time the Appeal is filed.

APPEAL TO THE CITY COUNCIL: Any person aggrieved with any determination of the Board of Appeals acting under this ordinance may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Board of Appeals decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for the filing of the Appeal.

The City Council may decline to hear the Appeal if it finds that all City plans, policies and ordinances have been properly followed. If it decides that all City plans, policies, and ordinances have not been properly followed, it shall hear the Appeal. Such an appeal, if heard, shall be opened within 60 days of the expiration of the appeal period.

Should you have any questions regarding this action, please call our office at (505) 924-3860.

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